

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Expedited Petition for Clarification and)	CC Docket 99-200
Exemption from Porting of “Grandfathered”)	
NXX Codes)	
_____)	

**EXPEDITED PETITION FOR CLARIFICATION AND EXEMPTION BY
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC / Commission) Rule 1.1,² hereby submits this Expedited Petition for Clarification and Exemption, urging the Commission to clarify and exempt from porting certain NXX codes. USTA seeks a clarification that decisions involving state area code relief preclude the commercial mobile radio service (CMRS) to wireline portability of grandfathered telephone numbers, not for reasons of competition, but for the subsequent customer confusion that will result if these telephone number mini-overlays are permitted. Moreover, these codes should not be subject to porting because these codes cannot, as a practical matter, be used by wireline local exchange carriers (LECs) and should be temporarily exempted.

Background

CMRS providers associate the NXX codes assigned to them with incumbent LEC rate centers in order to allow LEC customers in those areas to call CMRS customers without

¹ USTA is the Nation’s oldest trade organization for the local exchange carrier industry. USTA’s carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² 47 C.F.R. § 1.1.

incurring toll charges. Area code splits complicate these arrangements.³ With area code splits, customers located in the geographic area of the new number plan area (NPA) keep their seven-digit telephone numbers, but now use the new area code instead of the old one. In some area code splits, however, the state regulators have decided to treat CMRS customers differently from wireline LEC customers and not require CMRS customers to use the new area code. This different treatment is based on the fact that CMRS customers faced a purportedly disproportionate burden in having phone numbers changes because numbers must be programmed directly into wireless handsets.⁴

The industry refers to these NXX codes that have different NPAs from the rate centers with which they are associated as “grandfathered CMRS NXXs,” and USTA understands that there may be approximately 500 such codes nationwide. These grandfathered NXXs will create problems when CMRS providers begin porting numbers on November 24, 2003. If customers are permitted to port their wireless grandfathered numbers to the surrounding wireline network, customers would be required to dial 10 or 1+10 digits on all outgoing calls. This would be inequitable and confusing to the wireline subscriber because all other wireline subscribers in the same rate center may not be forced to dial 10 digits (if seven-digit dialing has been maintained in their area). In addition, all calls initiated to these numbers would also need to be dialed on a 10 or 1+10 digit basis even though they may be local calls. Neighbors whose numbers are in the native NPA would not be subject to these same requirements.

Moreover, the wireline company that “ported in” the wireless grandfathered numbers(s) would be faced with accommodating a mini-overlay situation. For such a port to work, the

³ There is no problem in the case of an overlay.

⁴ The Commission gave the States authority to do this in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392 ¶ 308 (1996); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 17964 ¶¶ 53-71 (1999).

wireline carrier would have to do the same kind of network preparation as would be required for an area code overlay, work which typically takes at least a year. Implementing the mini-overlay could trigger the mandatory ten-digit dialing requirement of section 52.19(c)(3)(ii) of the FCC's rules.⁵ This creates a dilemma for wireline companies who in some cases have been ordered by state regulators to maintain seven-digit dialing for their customers. In fact, this may force some wireline companies to be in violation of state dialing regulations.

Further, exempting grandfathered NXX codes from porting is necessary to ensure parity among all wireline providers. For example, if an incumbent LEC refuses to accept the wireless customer's port because of the "mini-overlay" constraints, the customer could then go to a competitive local exchange carrier (CLEC) who is leasing facilities via UNE-P. If the CLEC accepts the port, it de facto requires the incumbent LEC to build a mini-overlay. Thereby, as explained *supra*, requiring the incumbent LEC to upgrade its network to facilitate the port, which may be in violation of existing law.

In some cases, the porting of grandfathered NXX codes would require the establishment of additional trunking to support E911 and operator services for the ported wireless grandfathered numbers. Entries for these non-native area code numbers would need to be added to all the switches in a given rate center and the non-native area code would need to be installed in all of the switches in the NPA. This will be costly and inefficient for wireline service providers.

Finally, even if wireless subscribers were permitted to port their wireless grandfathered numbers only between wireless service providers, it would be confusing for customers and may delay the sunset of wireless grandfathered codes. Since these numbers are to be retired, allowing wireless-to-wireless porting would confuse and irritate subscribers because they would need to

⁵ 47 CFR § 52.19(c)(3)(ii).

surrender these numbers in the not-too-distant future. These customers would receive a mixed message and be greatly inconvenienced by allowing them to keep the numbers in one instance only to have them change their number shortly thereafter.

Since these wireless grandfathered numbers are in a sense not truly permanent numbers for the wireless subscribers (they will eventually be changed), it is questionable if they should even be ported between wireless providers. Number portability was ordered and implemented to allow subscribers to keep their existing telephone number and not have to change the number when switching service providers. In the case of these wireless grandfathered numbers, the subscriber's number is destined to be changed so imposing number portability on these numbers will be confusing to the subscriber, costly to wireline service providers and inconsistent with the basic concept of number portability.

The Requested Relief

The Communications Act of 1934, as amended, (the Act) defines number portability as the “ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”⁶ In the *Telephone Number Portability* proceeding, the Commission promulgated rules and deployment schedules for number portability.⁷ The FCC ordered LECs to begin the phased development of a long term service provider local number portability (LNP) method in the 100 largest Metropolitan Statistical Areas. In addition, the FCC found that under section 251(b) (2) of the Act that the public interest required CMRS carriers to assume the same LNP obligations as LECs, even though CMRS carriers were not expressly mentioned in the statute. The FCC has mandated that

⁶ 47 U.S.C. § 3(30).

wireless carriers provide number portability by November 24, 2003.⁸ Inter-modal LNP between wireline and wireless carriers can occur within the geographic boundary of the wireline rate center.

Section 52.23 of the Commission's rules imposes LNP requirements on LECs.⁹ Under section 52.23, LECs must provide number portability in compliance with certain criteria. Most notably, number portability should "not require end users to change their telecommunications numbers."¹⁰ However, in the case of porting grandfathered NXX codes, customers will eventually experience the "impairment of convenience" that the Act tried to prevent.

The approximate 500 grandfathered NXX CMRS codes represent only one percent of the more than 38,000 NXXs assigned to CMRS providers. The likelihood of a CMRS-to-wireline port in these codes represents a significantly smaller probability than the one percent of the grandfathered telephone numbers to which this would apply. In addition, CMRS customers will continue to receive service as they do today. The exemptions would not change the way landline customers make calls. Exempting these codes from porting will not have any effect on the availability of telephone number resources.

The exemption need not be permanent. It would last only as long as it takes CMRS providers to assign to these customers numbers that are geographically appropriate, having the CMRS provider change the rate center designation of the grandfathered code to a rate center consistent with the geography of the NPA, and changing the telephone numbers of the customers

⁷ *Telephone Number Portability*, First Report & Order and Further Notice of Proposed rulemaking, 11 FCC Rcd 8352 (1996).

⁸ Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability, Memorandum Opinion and Order, 17 FCC Rcd 14972 (2002).

⁹ 47 CFR § 52.23.

¹⁰ 47 CFR § 52.23(3).

using numbers in these grandfathered exchanges. Thus, USTA seeks a temporary exemption to porting of these grandfathered numbers until such time as these remedies are implemented.

Conclusion

For the reasons set forth above, USTA requests that the FCC grant this Petition and clarify that decisions involving state area code relief precludes portability of grandfathered telephone numbers, and that grandfathered codes should be prevented from porting until the preceding remedies are implemented.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: _____

Lawrence E. Sarjeant
Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 2005
(202) 326-7300

September 8, 2003

